

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 825

ELIZABETH ROSALIA WOODBY, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner, an alien who admittedly engaged in prostitution after admission to the United States, was held deportable under Sections 241(a)(12) and 212(a)(12) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(12), 1182(a)(12)), which authorize the deportation of "[a]liens who are prostitutes or who have engaged in prostitution." The only question presented by the petition is whether the court of appeals erroneously affirmed the deportation order in light of petitioner's claim that she had engaged in prostitution only for a limited period and under circumstances of financial duress.

(1)

The Special Inquiry Officer, the Board of Immigration Appeals and the court of appeals all assumed, *arguendo*, that circumstances of financial need as alleged by petitioner might constitute a defense to a deportation order based upon acts of prostitution (Pet. 10a-13a, 19a-20a, 5a-7a). The Special Inquiry Officer and the Board of Immigration Appeals found, however, that petitioner had continued her practice of prostitution for a considerable period after her financial obligation—the repayment of a \$300 loan to a salesman who acted as her procurer—had been satisfied (Pet. 13a, 19a), and the court of appeals held that this finding was supported by substantial evidence (Pet. 7a). Thus while petitioner's financial obligation was admittedly satisfied by July 1957 (Pet. 4a), one witness testified, for example, that he had been invited by petitioner to her apartment for the purpose of prostitution in December, 1957 (Pet. 17a). In these circumstances, there is no occasion for further review of the finding that petitioner had continued to engage in prostitution well after any financial duress had been removed.

Petitioner also asserts (Pet. 17-19) that the court of appeals should have remanded the proceedings for the purpose of adducing additional evidence relating to the duration of petitioner's involvement in prostitution. Petitioner, who has been represented by counsel throughout, had an opportunity to present such evidence both at a preliminary interrogation and at the hearing before the Special Inquiry Officer. She further gave her version of the relevant facts in an affidavit submitted to the Board of Immigra-

tion Appeals upon her motion for reconsideration. In denying that motion, the Board stated that the affidavit merely repeated matters which had previously been considered (Pet. 22a). The denial of the motion to reopen the proceedings was clearly within the Board's discretion and petitioner now suggests no new relevant evidence justifying a further hearing.¹

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JANUARY 1966.

¹ Even though no application for such relief was made, the Special Inquiry Officer considered petitioner's eligibility for adjustment of status under Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) and waiver of inadmissibility for prostitution under Section 212(g) of the Immigration and Nationality Act, now redesignated Section 212(h) (8 U.S.C. 1182(h)). However, since petitioner's citizen children were in the legal custody of their grandparents, he found that petitioner's deportation would not result in hardship to them (Pet. 13a). Petitioner has never questioned this finding in any subsequent administrative or judicial proceedings. Investigations of the Immigration and Naturalization Service, not shown in the record, indicate that petitioner's attempts to regain custody of her children have been unsuccessful and that, as of September 29, 1965, the children were still in the legal custody of their grandparents, pursuant to court order. Petitioner's husband is deceased (Pet. 8a).